

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DALE LESTER MORRIS,

Plaintiff,

v.

HEIDI WASHINGTON,
CARMAN MACINTIRE, and
SHERMAN CAMPBELL,

Case No. 20-13268

Honorable Nancy G. Edmunds

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION FOR
THE APPOINTMENT OF COUNSEL [39]**

This prisoner civil rights case was dismissed for failure to state a claim upon which relief may be granted on August 13, 2021. (ECF No. 33.) Plaintiff then filed a notice of appeal with the Sixth Circuit Court of Appeals. (ECF No. 35.) This Court subsequently denied Plaintiff's application to proceed in forma pauperis on appeal, finding an appeal cannot be taken in good faith. (ECF No. 38.) The matter is now before the Court on Plaintiff's motion for the appointment of counsel. (ECF No. 39.)

Because Plaintiff's complaint has been dismissed and this case is now closed, Plaintiff's motion is moot. Also, a notice of appeal generally "confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal." *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985) (citation omitted). Thus, the Court may not "alter the status of the case as it rests before the Court of Appeals." See *United States v. Gallion*, 534 F. App'x 303, 310 (6th Cir. 2013) (quoting *Dayton Indep. Sch. Dist. v. United States Mineral Prods. Co.*, 906 F.2d 1059, 1063 (5th Cir. 1990)).

But even if this case were still pending before the Court, as a general matter, “[t]he appointment of counsel in a civil proceeding is not a constitutional right and is justified only in exceptional circumstances.” *Lanier v. Bryant*, 332 F.3d 999, 1006 (6th Cir. 2003) (citation omitted). To determine whether exceptional circumstances exist, courts consider the type of case and the ability of the plaintiff to represent himself. *Id.* Here, Plaintiff demonstrated an ability to represent himself, but the Court ultimately found that he failed to state a claim upon which relief may be granted. Thus, there are no exceptional circumstances that would have warranted the appointment of counsel.

For the foregoing reasons, Plaintiff’s motion for the appointment of counsel is DENIED.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: October 28, 2021

I hereby certify that a copy of the foregoing document was served upon counsel of record on October 28, 2021, by electronic and/or ordinary mail.

s/Lisa Bartlett
Case Manager